

## Land Acquisition for Public Interest Case Study of Toll Road Development in Indonesia

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### Abstract

### Original Research Article

This research is conducted with aim of knowing how to regulate, determine procedures, and find obstacles and solutions to the land acquisition for the construction of toll roads for the public interest. This research uses a normative juridical method with a statutory approach and a conceptual approach. The results of the research show that the procedure of land acquisition for toll road infrastructure for development in the public interest according to Law number 2 of 2012 stipulates that land acquisition is the activity of providing land by giving proper and fair compensation to the entitled party. Procedurally, the Land Procurement in the construction of toll road infrastructure by the State-Owned Enterprises (SOE) or BUMN (in this case is Persero) has fulfilled the principle of public interest, in which the development is actually owned by the government, carried out by the government (through SEO Persero), and does not seek profit so that it can be qualified as land acquisition in the public interest. Several land acquisition constraints identified are (1) difficulty in reaching a major compensation agreement, (2) lack of knowledge and awareness of land owners about the social function of land rights, (3) the importance of infrastructure development including toll roads, (4) limited procurement land funds, (5) there is a land ownership dispute. In addition, the solution is (a) a persuasive approach to the community (b) providing an understanding of the valuation system that takes into account the principle of "the highest and the best use", (c) taking over the process and funding of land acquisition by the government through agencies that require land, and (d) consignment. Other than that, the legal settlement mechanism when the owner of land rights refuses the form and amount of compensation is set based on Law number 2 of 2012.

**Keywords:** Land Acquisition, Public Interest, Toll Road Development in Indonesia.

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## INTRODUCTION

As it is, infrastructure development requires land. Therefore, every land acquisition to meet development needs is increasing, as a place to live or to carry out business activities. Thus, the need for certainty in the land sector also increases. The provision of guarantees in the land sector requires a written, complete, and clear instrument carried out consistently with the written contents of the applicable statutory provisions. The government has issued Law Number 5 of 1960 concerning the Basic Agrarian Law (UUPA). The aim is to realize what has been stated in Article 33 paragraph (3) of the Constitution of the Republic of Indonesia (UU NRI), in which "Earth, water, and natural resources contained therein whose control is assigned to the Republic of Indonesia must be used as much as possible for the development of citizens."

The purpose of government power and leadership is to maintain a system of order so that people can lead a normal life, ensure that fair treatment is applied to every citizen, without discriminating against any status behind their existence, carry out public works, and provide services in areas that are impossible to do by non-government institutions, making efforts to improve social welfare by implementing economic policies that benefit the wider community [1]. As well as creating conditions that allow every member of the community to develop their abilities and creativity to achieve common goals.

<sup>1</sup>Beni Ahmad Saebani and Fiqh Siyasah, *Terminologi Dan Lintasan Sejarah Politik Islam Sejak Muhammad Saw Hingga Al-Khulafa Ar-Rasyidin* (Bandung: CV Pustaka Setia, 2015).

In order to achieve this goal, the strategy of equitable distribution of toll road development in various parts of Indonesia is one of the government's chosen efforts. During the administration of President Jokowi, there was a massive toll road infrastructure construction; it is estimated that there would be approximately 47 toll roads developed [2]. So far, the toll road construction that has been carried out has also made quite significant progress; this is an achievement that may need to be proud of, because this development is a process in which closely related to the dignity of the community so that by maximizing development, it is believed that it can encourage economic and social growth. It is also a strategy for increasing mobility in the main corridors in Indonesia as well as driving the quality of logistics in Indonesia.

The government stipulates and enforces Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest. This law is used as the basis for the implementation of any land acquisition carried out in Indonesia. To support increasingly complex development, an adequate transportation network is needed, so that development can be evenly distributed in all regions throughout Indonesia.

Land procurement for the construction of toll roads carried out by the government in its implementation includes the problem of providing land for the development itself, including land acquisition for the construction of toll roads [3]. State land controlled directly by the state is limited or almost non-existent. The only way that can be taken is by liberating land owned by citizens, whether controlled by customary law, or other rights attached to it [4]. Land procurement is the activity of land procurement by giving proper and fair compensation to the entitled party as regulated in Article 1 number (2) of Law Number 2 of 2012. Law Number 38 of 2004 concerning Roads Article 1 number 7 and 8 stipulates that toll roads are public roads that are part of the road network system and as national roads whose use is required to pay tolls. In addition, toll road is a certain amount of money paid for the use of toll roads. Article 2 paragraph (1) of Government Regulation Number 15 of 2005 concerning Toll Roads states that the implementation of toll roads is intended to achieve equitable distribution of development and its results as well as balance in regional development by taking into account justice, which can be achieved by building a road network

whose funds come from road users. The purpose of toll roads is to increase the efficiency of service delivery and distribution of goods in order to increase economic growth, especially in areas with a high level of development.

However, state land directly controlled by the state is limited or almost non-existent. According to Soedharyo Soimin, the only way is to liberate land owned by the people, whether controlled by customary law or other rights attached to it [5]. In principle, land acquisition is carried out by means of deliberation between parties who need land and holders of land rights whose land is needed for development [6]. These activities are done by relinquishing land rights and revoking land rights. The release and revocation are 2 (two) ways to obtain land rights, where those who need land do not meet the requirements as holders of land rights. Releasing land rights is releasing the legal relationship between the holder of land rights and the land they control by providing compensation on the basis of deliberation.

In the process of determining the amount of compensation for land, it is entirely the responsibility of the public appraiser. This is based on Article 63 paragraph (1) of the Presidential Regulation (Perpres) of the Republic of Indonesia Number 71 of 2012 concerning the Implementation of Land Acquisition for Development in the Public Interest which states that "The determination of the amount of compensation is carried out by the Head of the Land Procurement Executor based on the results of the appraisal service of an appraiser or appraiser. public". Based on Article 34 paragraph (3) of Presidential Regulation No. 71 of 2012 the value of compensation based on the results of the appraiser's assessment as referred to in paragraph (2) becomes the basis for deliberation to determine compensation. The need for land for public interest often causes problems such as no agreement between the land owner (rights holder) and the government or parties in need regarding the amount of compensation. This is the most controversial issue. On the one hand, the demands for development are urgent, while most citizens also need land as a place of settlement and a place for their livelihood.

Research by Paurindra Ekasetya (2015) found that on the obstacles that arise when land acquisition for the construction of the Trans Java Toll Road in Brebes Regency and the efforts of the land acquisition

<sup>2</sup>"Inpres Number 1 Year 2016" (nd).

<sup>3</sup>Sudjarwo Marsoem, Compensation for Land Procurement Mapping Strategic Solutions for Indonesia's Infrastructure Development (Jakarta: Renebook, 2015).

<sup>4</sup>D. Isnaeni, "Land Procurement for Toll Road Construction in the Perspective of State Controlling Rights," *Yurispruden: Journal of the Faculty of Law, Islamic University of Malang* (2020): 4.

<sup>5</sup>Soedharyo Soimin, *Status of Land Rights and Acquisition Second Edition* (Jakarta: Sinar Graphic, 2004).

<sup>6</sup>Maria SW Sumardjono, *Land in the Perspective of Economic, Social and Cultural Rights* (Jakarta: Kompas, 2008).

committee in overcoming these obstacles.<sup>7</sup> The difference between previous research and this research is that this research will focus more on resolving obstacles that occur during the land acquisition process and explaining the principle of fairness in providing compensation in land acquisition for the construction of toll road infrastructure.

Based on the results of the description above, several problems arise, including (a) how are land acquisition arrangements for toll road infrastructure? and (b) what are the obstacles and solutions in land acquisition for toll road construction?

## LITERATURE REVIEW

### Land rights

Talking about the definition of land rights, Budi Harsono explained "Land rights are rights of control over land which contain a series of powers, obligations and/or prohibitions for the holder of the right to do something about the land being entitled". Something allowed, obligated, or prohibited done, which is the content of the right of control, becomes the criterion or the distinguishing criterion between the rights of control over land as regulated in land law. On the basis of these provisions, the state has the authority to determine land rights that can be owned by and or granted to individuals and legal entities that meet the specified requirements. This authority is regulated in Article 4 paragraph (1) of the LoGA, which states that "On the basis of the right of control from the state as referred to in Article 2, it is determined that there are various types of rights to the surface of the earth called land, which can be given to and owned by people, either alone or together with other people and legal entities."

Based on the article, the state determines land rights as regulated in Article 16 paragraph (1) of the LoGA, namely:

- a. right of ownership,
- b. cultivation rights,
- c. building rights,
- d. right to use,
- e. rental rights,
- f. right to clear land,
- g. the right to collect forest products, and
- h. other rights that are not included in the rights mentioned above which will be stipulated by law as well as rights of a temporary nature as referred to in Article 53.

For legal entities established under Indonesian law and domiciled in Indonesia, they can have all land

<sup>7</sup>MP Ekasetya, "Implementation of Land Procurement for Development in the Public Interest (Analytical Study on the Construction of the Trans Java Toll Road in Brebes Regency)" (Semarang State University, 2015).

rights except for limited property rights to legal entities determined by the government, as regulated in Article 30 paragraph (1) letter b and Article 36 paragraph (1) letter b UUPA [<sup>8</sup>].

### Position of Toll Road in Public Interest Development

The definition of "public interest" in the context of land acquisition has been mentioned in several laws and regulations governing land acquisition for development in the public interest. The phrase "public interest" is found in many sources, such as (a) "... for the public interest, including the interests of the nation and the state as well as the common interests of citizens, land rights can be revoked by providing appropriate compensation and according to manner regulated by law" [<sup>9</sup>]; (b) "...for the public interest, including the interests of the nation and the state and the common interest of the people, as well as the interests of development, the President in a state of coercion after hearing the Minister of Agrarian Affairs, the Minister of Justice and the Minister concerned may revoke the rights to land and property that are on it" [<sup>10</sup>]; (c) "the development has the character of a public interest if the activity involves (i) the interests of the nation and the state, and or (ii) the interests of the wider community, and or (iii) the interests of the common people, and or (iv) the interests of development" [<sup>11</sup>]; (d) "public interest" is the interest of the nation and state and or the interest of the wider community [<sup>12</sup>]; (e) Public interest is the interest of the Nation and the State and or the interests of the common community and or the interests of development, in accordance with the prevailing laws and regulations [<sup>13</sup>].

Based on the definition of "public interest" mentioned above, it can be concluded that "development in the public interest" is various types of development intended for the interests of the nation and state and society for the greatest prosperity of the

<sup>8</sup> Aslan Noor, *Conception of Land Ownership for the Indonesian Nation* (Bandung: CV. Mandar Maju, 2006).

<sup>9</sup> "UU no. 5 of 1960 concerning Basic Regulations on Agrarian Principles (State Gazette 1960-104, Supplement to State Gazette Number 2043)."

<sup>10</sup> "Article 1, Law no. 20 of 1961 concerning Revocation of Land Rights and Objects On It (Ln 1961/288: Tln No. 2324, State Gazette and Supplement to the State Gazette of 1961)".

<sup>11</sup> "Article 1, Presidential Instruction No. 9 of 1973 concerning the implementation of the revocation of rights to land and objects on it."

<sup>12</sup> "Article 1, Law no. 20 of 1961 concerning Revocation of Land Rights and Objects On It (Ln 1961/288: Tln No. 2324, State Gazette and Supplement to the State Gazette of 1961)."

<sup>13</sup> "Explanation of Article 49 of Law No. 9 of 2004 concerning Amendments to Law No. 5 of 1986 concerning the State Administrative Court (State Gazette of the Republic of Indonesia Number 35)".

people. From the several definitions of the term "public interest" from development for the public interest above, the Government has explicitly translated into types of development for the public interest through Article 5 of Presidential Regulation Number 36 of 2005 and Presidential Decree Number. 65 of 2006 and Article 10 of Law Number 2 of 2012. In Article 5 of Presidential Regulation Number 36 of 2005, it is stated that there are 19 types of development categorized as development for the public interest, 7 (seven) types of development in Presidential Decree Number 65 of 2006 Article 5, and 18 (eighteen) in Law Number 2 of 2012 Article 10).

From the two Presidential Regulations and the law on land acquisition, information can be gleaned that the government has narrowed the types of development for the public interest from 19 types (Article 5, Presidential Regulation Number 36 of 2005) to 7 types (Article 5, Prepres Number 65 of 2006). However, the types of development for the public interest are further widened to 18 types (Article 10, Law Number 2 of 2012). From the three laws and regulations concerning land acquisition for development for the public interest, toll roads are positioned as one of the types that are consistently mentioned. Considering that toll roads have elongated characteristics and can cover several parts of different administrative areas, with various variations in regional physical, social, and cultural conditions, Therefore, the discussion regarding land acquisition for toll road construction becomes excessively important, especially if it is related to land acquisition which has always been the main problem. In addition, the many types of development that fall into the category of "development in the public interest" indicate that the government will face serious land acquisition problems, especially in the land acquisition process. Therefore, information about the types of development for the public interest is important to describe the burden of land acquisition problems that will be faced by the Government in the future, in addition to land acquisition for the construction of toll roads.

## RESEARCH METHOD

The type of research used in this research is normative juridical. The approach used in this research is a statutory approach, an approach by determining laws and regulations relating to the issues discussed and a conceptual approach by providing an analytical point of view on problem solving in legal research from the aspect of legal research. the legal concepts behind it, or even can be seen from the values contained in the norming of a regulation in relation to the concepts used.

Sources of legal materials used in this study are primary legal materials which include the Civil Code, Law Number 5 of 1960 concerning Agrarian Principles (UUPA), as well as other laws and regulations related to research topics. In addition, the

author uses secondary materials which include books, journals and articles, as well as tertiary legal materials, namely materials that provide instructions and explanations for primary and secondary legal materials [14]. The technique of collecting legal materials uses library research. The analytical method used is descriptive qualitative analysis, namely presenting a study on the data obtained from the object of research. A descriptive study is intended to provide data that is as accurate as possible about humans, conditions or other symptoms [15]; it means that the legal material obtained in the research is described and linked in such a way, so that it is presented in a more systematic writing in order to answer the problems that have been formulated.

## DISCUSSION

### Land Acquisition Arrangements for Toll Road Infrastructure

The role of land, both to individuals and the community at large, is important so that this term often creates a conflict of interest in the use of certain lands. In Indonesia, the regulation of land is carried out through the provisions of the Basic Agrarian Law (UUPA) No. 5 of 1960, in which it does not recognize the existence of land ownership as known in the Civil Code. To implement the Basic Agrarian Law, the government has stipulated Government Regulation Number 24 of 1997 concerning Land Registration. This is intended so that the regulation, control, ownership, and use of land can be directed towards ensuring more order in the field of land law, land administration, land use, or maintenance of land and the environment.

Article 6 of the Basic Agrarian Law has determined that "All land rights have social functions". Likewise, in the explanation of Article 6 of the LoGA, it can be concluded that in a person's property rights there are rights from the community [16]. If Article 6 of the LoGA is carefully examined, it appears that several things can be seen as the nature of the social function of property rights on land which is intended as a basic affirmation of the limitation of individual freedom. The nature of social functions includes in the following [17].

1. The use of land must be in accordance with the condition of the land, the nature and purpose of granting rights so that according to the UUPA, abandoned land is contrary to its social function;

<sup>14</sup> Soerjono Soekanto and Sri Mamudji., Normative Legal Research A Brief Overview (Jakarta: Rajawali Pers PT Raja Grafindo Persada, 2011).

<sup>15</sup> Soejono Soekanto, Introduction to Legal Research (Jakarta, 2007).

<sup>16</sup> AP. Parlindungan, Anthology of Agrarian Law and Land Reform (Bandung: Mandar Maju, 1994).

<sup>17</sup> Yusriadi, Industrialization & Changes in Social Functions of Land Ownership (Yogyakarta: Genta Publishing, 2010).

2. The use of land must be in accordance with the plan determined by the Government;
3. If the public interest requires that individual interests be pushed so that they suffer losses, then compensation must be given to them;
4. Land is not a trade commodity so it is not justified to make land an object of speculation.

Land acquisition must be carried out in a planned manner, as regulated in Article 1 point 3 of Presidential Regulation Number 71 of 2012 which states that "Land acquisition is any activity to obtain land by way of compensation to those who release or surrender land, buildings, plants, and objects related to land" [18]. Law Number 2 of 2012 concerning land acquisition for development in the public interest (referred to as the Land Acquisition Law) states that what is meant by land acquisition is the activity of providing land by providing appropriate and fair compensation to the entitled party.

### **Procedure for Granting Land Procurement for Toll Road Infrastructure for Public Interest**

Law Number 2 of 2012 in particular Article 1 paragraph 2 stipulates that land acquisition is an activity to provide land by providing appropriate and fair compensation to the entitled party. Meanwhile, public interest according to Article 1 number 5 of Presidential Regulation Number 36 of 2005 is the interest of the majority of society. In this regard, Law Number 2 of 2012 especially in Article 1 paragraph (6) states that public interest is the interest of the nation, state, and society which must be realized by the government and used as much as possible for the prosperity of the people. In addition, Law Number 2 of 2012 also explains that Land for Public Interest as referred to in Article 4 paragraph (1) is used for development.

The implementation of land acquisition according to this Law is carried out by means of surrender/release of rights or revocation of land rights. Based on Law Number 2 of 2012 Article 1 paragraph (9), relinquishment of rights is the activity of terminating legal relations from the entitled party to the state through the Defense Agency. In comparison with Presidential Regulation Number 36 of 2005, particularly Article 1 point 6, relinquishment/transfer of rights is an activity to release the legal relationship between the holder of land rights and the land under their control by providing compensation on the basis of deliberation. Parties who will relinquish or surrender rights to land, buildings, plants, and other objects related to land based on Article 1 point 7 of Presidential Regulation Number 36 of 2005 are:

- a. individual,

- b. legal entity,
- c. institutions, and
- d. business units that have control rights over land and/or buildings as well as plants on the land.

Then for the revocation of land rights, it is emphasized in Article 3 paragraph (2) of Presidential Regulation Number 36 of 2005 where the revocation of land rights is carried out based on the provisions of Law Number 20 of 1961 concerning Revocation of Rights to Land and Objects in on it. In relation to the land rights mentioned above, Article 1 point 8 of Presidential Regulation Number 36 of 2005 also states that land rights are rights to plots of land as regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations.

Article 1 point 6 stipulates that the release/transfer of rights is an activity to release the legal relationship between the holder of land rights and the land under their control by providing compensation on the basis of deliberation. However, in its implementation, in the process of relinquishing land rights, there are problems that are difficult to find a solution for because each party does not want to give in to their respective arguments and principles so that the land acquisition proceeded by SEO (Persero) faces obstacles. Land acquisition in the construction of toll road infrastructure by SEO (Persero) has fulfilled the principle of public interest, in which the development is actually owned by the government, carried out by the government, and not for profit so that it can be qualified as land acquisition for the public interest.

Obstacles in the implementation of land acquisition for toll road infrastructure development include: (1) judging from the legal substance, there are still many unclear rules so that in practice it creates injustice in society; (2) Judging from the legal structure, the performance of the Land Procurement Committee is not serious enough so that there is a lot of dissatisfaction in the community, especially in terms of deliberation to determine the value of compensation; (3) Judging from the legal culture, the development of individualistic values in society becomes an obstacle in determining the provision of compensation. In addition, the principle of justice in providing compensation for land acquisition in the construction of toll road infrastructure has not been achieved.

The community considers the Land Procurement Committee to be less transparent in determining the amount of compensation. Lack of transparency in this case could be due to unclear regulations governing the basic reference for determining the amount of compensation in the Land Procurement Law. This lack of transparency is also supported by the determination of the price of compensation which changes from the appraisal team, in this case the compensation assessment is carried out

<sup>18</sup> "State Gazette of the Republic of Indonesia (LNRI) Number 22 of 2012, Supplement to the State Gazette of the Republic of Indonesia (TLNRI) Number 5280." (nd).

with separate mechanisms and considerations, giving rise to negative prejudice from the public that the government is not transparent in determining the amount of compensation.

### Obstacles in Land Acquisition for Toll Roads

The most pressing issue in the current toll road construction is land acquisition. Although the construction of toll roads is intended for the public interest, there are still more people who do not want to release their land for this purpose. Hasibuan in Sitorus *et al.* (1995) state that there are two obstacles in hindering successful implementation of land acquisition [<sup>19</sup>], namely obstacles that arise due to community psychological factors and obstacles that arise due to limited funds. These psychological factors can be in the form of (a) there are land owners who think that the government is a place to be spoiled for compensation, therefore they ask for a high amount of compensation so they do not care for their neighbors who are willing to accept the compensation value resulting from the deliberation, (b) there are land owners who think that their land is noble or sacred, so they are reluctant to give up their land even with compensation; therefore, they persist in asking for a very high compensation value, and (c) lack of awareness of land owners about the appropriateness of prioritizing the public interest over their own interests.

Various other obstacles in land acquisition are also explained by Hayati (2011) that [<sup>20</sup>] (a) there is uncertainty in the status of land ownership between what is understood by the land owner and what is understood by the village government, when the land has been loaned to use by the owner for village roads that is not accompanied by proof of handover of the land to the village government, so that with the project that will free up the land, there will be mutual claims between the owner and the village government, (b) difficulties in obtaining replacement land for lands whose replacement does not use money, especially if Law Number 2 of 2012 which provides opportunities to provide compensation in various forms, and (c) the lack of orderly and complete management of land acquisition archives both at the BPN and in the Administrative Section of the District Secretariat.

There are still a number of weaknesses that occur, such as the Letter of Approval for Determination of Development Locations (SP2LP) from the Regent/Mayor or Governor which is often not processed quickly. This provides an opportunity for land speculators to transact before land-freezing land ownership. Likewise, in the event of a price or

<sup>19</sup> SRP Sitorus, Evaluation of Land Resources (Bandung: Tarsito, 1995).

<sup>20</sup> Rahmi. Hayati, "Land Procurement for Southern Cross Road Construction in Kebumen Regency, Central Java Province" (STPN Yogyakarta, 2011).

ownership dispute which eventually leads to a consignment due to the application of weak regulations, as a result it is not possible to carry out the execution of land as soon as possible, causing development to be delayed. Furthermore, Imam Nirwansyah from the Indonesian Toll Road Association (AJTI) stated that the absence of Key Performance Indicators for land acquisition implementer is ranging from members of the Land Procurement Committee (P2T) at the regional level to the Land Acquisition Team (TPT) at the central level, causing them to work slowly because the longer they work, the more incentives they have. This situation will be used as a mode to extend the land acquisition completion process in order to obtain greater incentives.

### Efforts to Resolve Land Acquisition Constraints for Toll Roads

The first is the lack of knowledge and awareness of land owners regarding the social function of land, causing them to prioritize their own interests above the public interest; for example, the reluctance to release their land for the public interest. This is understandable, because there has never been any socialization regarding the social function of land rights by the Government as the authority holder. Socialization on the "social function of land rights" is generally only carried out in conjunction with land acquisition activities; thus, it is possible that this activity is not in accordance with the right psychological condition. Therefore, a gradual and structured socialization of land law is proposed through POKMASDARTIBNAH (Land Orderly Awareness Community Groups) in every village.

The second is the public's low understanding of the social function of land rights and the low level of public understanding of the tangible and intangible benefits of toll road construction. It can be seen from the public's objections and rejections to the planned toll road construction that passes through their settlements. This term can be solved through socialization regarding the social function of land rights and the various benefits that will be generated by the continuous construction of toll roads, both for the surrounding community and the wider community, as well as the nation and state. In line with this, Djoko Setijawarno (2010) stated that if the government and toll road managers are willing, there are many opportunities that can be utilized to provide benefits for all parties, both businessmen, government, as well as the community around the toll road, the empty space under the toll road that has not been utilized. If only the location could be optimized, it would be very beneficial for the displaced residents and at the same time comfortable to look at. If an agreement is not reached with this settlement approach, it can be resolved following the procedure in Article 23 paragraphs (1-5) of the Law Number 2 of 2012.

The third is the difficulty of reaching an agreement on the price of compensation between the landowners and the government who need the land. It can happen due to several aspects defined as follows.

- a. Many land owners think that they can ask for a large amount of compensation beyond the results of the deliberation, because they think that the construction of toll roads is a big project that will bring big profits for investors. To complete this opinion, the assigned extension workers must be knowledgeable and broad-minded so that they are able to explain other benefits they will receive besides compensation money, both tangible and intangible benefits, in addition to the fact that the land they currently own has a social function. In addition, the appraisal team must also work professionally to consider various factors that affect the value of the land so that the compensation value offered is also more rational for various interested parties.
- b. There are owners who think that the land is noble or sacred, so they ask for a very high compensation value. In dealing with such land owners, the government or parties assigned by the government may involve community leaders or certain parties who are respected by community groups who make their land sacred, thereby disrupting the land acquisition process. In addition, the appraisal team must also work professionally to consider various factors that affect the value of the land so that the compensation value offered is also more rational in order to be accepted by various interested parties.
- c. The price of compensation produced by independent appraisers is too low even below the NJOP. Therefore, the analysis of The Highest and The Best Use = HBU (Highest and best use) should be carried out and used as a basis for assessing land parcels that cover a spatial expanse. With this HBU approach, the appraiser will be able to offer several choices of the amount of compensation value that can be used as a basis in deliberation to determine the amount of compensation. In connection with the compensation price agreement in land acquisition, which usually only looks at economic interests and motives. In this case, if the land acquisition and pricing is in accordance with the law, plus an accommodating toll road land acquisition team, the problem can be resolved properly and quickly (Djoko Setijawarno, 2010).

The existence of land ownership disputes is indeed a serious problem to be resolved. However, the government must be able to encourage various parties to mediate to resolve this problem. This is necessary so that the settlement can be faster and does not interfere with the land acquisition process. If these efforts cannot be achieved, it can be completed based on the provisions of Article 42 paragraph (2) letter (b) of Law Number 2 of 2012 which essentially emphasizes that "The deposit of compensation to the local court is also

applied to Land Procurement Objects that will be given compensation including land that is being litigated in court, whose ownership is still disputed, placed for confiscation by the competent authority, or as collateral at the bank".

### **Legal Settlement Mechanisms when Land Rights Owners Refuse the Form and Amount of Compensation**

Procurement of land for the public interest aims to provide land for the implementation of development in order to improve the welfare and prosperity of the people of the nation and the state while still guaranteeing the legal interests of the entitled parties who are the rightful parties. Article 1 paragraph (3) of Law Number 2 of 2012 in conjunction with Presidential Regulation 71 of 2012 Article 17 stated that the entitled party is the party that controls or owns the object of land acquisition needed for development in the public interest which includes:

- a. holders of land rights,
- b. management holder,
- c. nadzir for waqf land,
- d. owners of ex-customary land,
- e. indigenous peoples,
- f. the party who controls the state funds in good faith,
- g. holders of basic land tenure, and/or
- h. owner of buildings, plants, or other objects related to land.

In the event that the party who has the right to refuse the form and/or amount of compensation based on deliberation on the determination of compensation but does not file an objection to the district court or refuses compensation based on a court decision that has obtained permanent legal force, compensation can be taken at the clerk of the Court within the time desired by the court. The entitled party is accompanied by a cover letter and the Head of the Land Procurement Executor and or if the P2T task has ended then the Cover Letter and the Head of the local BPN. If the whereabouts of the party entitled to receive compensation is not known, the land acquisition operator shall notify in writing of the absence of the entitled party to the sub-district and sub-district head/village head or other names. In the event that the rightful party's whereabouts are known, the party entitled to submit an application to the Court to take compensation accompanied by a cover letter and the Head of the Land Procurement Executor.

After the implementation of the provision of compensation and relinquishment of rights has been carried out or the provision of compensation has been deposited in the District Court, the ownership or rights to the land and the party entitled to it are nullified and evidence of their rights is declared invalid and the land becomes land controlled directly by the state.

## CONCLUSION

The procedure for granting land acquisition for toll road infrastructure for development in the public interest according to Law Number 2 of 2012 stipulates that land acquisition is the activity of providing land by giving proper and fair compensation to the entitled party. Procedurally, the land procurement in the construction of toll road infrastructure by State-Owned Enterprises (SEO) or BUMN (Persero) has complied with the principle of public interest, in which the development is actually owned by the government, carried out by the government (through SEO Persero) and does not seek profit so that it can be qualified as land acquisition for public interest.

There are many obstacles found in the land acquisition process in the context of land acquisition for development for the public interest of toll roads, including (a) low public knowledge and awareness about the social function of land rights, (b) low public understanding of the importance of toll roads, (c) the amount of compensation offered is too low, (d) limited funds for land acquisition, and (e) land ownership disputes. Possible resolution efforts depend on the nature and causes of the obstacles that arise. Solving efforts can be grouped into (a) a persuasive approach to the community which is conveyed through socialization and counseling to overcome the occurrence of ignorance of the landowner community about the social function of land rights and development carried out, (b) providing an understanding of the assessment system that takes into account the principle of "the highest and the best use" as well as the basic assessment of land owners to overcome difficulties in reaching an agreement on the amount of compensation because land owners feel that the amount of compensation offered is too low, (c) takeover of the land acquisition process and funding by the government through agencies that require land to overcome funding limitations, (d) consignment to resolve land ownership disputes. Other than that, the legal settlement mechanism when the owner of land rights refuses the form and amount of compensation based on Law Number 2 of 2012.

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